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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1962.

No. 516

MALCOLM LEBERT PARKER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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BRIEF OF PETITIONER.

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit is printed on pp. 60 to 66 of the Transcript of Record (R 60 to 66), and is reported at 307 F. 2d 585 (1962).

JURISDICTION BELOW.

The judgment of the Court of Appeals was entered on August 20, 1962 (R 60), Petition for Rehearing was denied on September 14, 1962 (R 67). The Petition for a Writ of Certiorari was filed on October 15, 1962, and was granted on December 17, 1962 (R 67).

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), also Rule 37(b) and 44(a) F.R. Crim. Proc.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

The constitutional provisions, statutes, and regulations involved are set forth in the appendix, *infra*, pp. 1a-8a.

QUESTIONS PRESENTED FOR REVIEW.

I.

Whether the Court of Appeals correctly ruled that this Court's decision in *Dickinson v. U.S.*, 346 U.S. 389, 74 S.Ct. 152, applies only to cases which involve "ministerial status."

II.

Whether the Courts below correctly ruled that there was a *basis in fact* for the denial of petitioner's exemption as a conscientious objector to both combatant and non-combatant service on the ground of religious training and belief on the sole ground that he was employed in a candy factory as a laborer, a small part of the products of which factory were purchased by the Armed Forces.

III.

The Local Board before which petitioner was classified did not consider it fair to other registrants to grant anyone a conscientious objector classification, exempting him from combatant and non-combatant service. That Board granted petitioner exemption from non-combatant service only, even though acknowledging the sincerity of his claim. The Appeal Board classified the petitioner

de novo, but gave him the same classification as the Local Board did. Did the Appeal Board's classification of *de novo* overcome the Local Board's illegal conduct and petitioner's deprivation of due process?

IV.

Was it a prejudicial error by the Trial Court, notwithstanding of the Court of Appeals holding to the contrary, to prevent petitioner to present evidence attempting to overcome the Government's *ex parte* statement alleging that the company that employed petitioner was manufacturing implements of war.

V.

Was it a prejudicial error on the part of the Trial Court notwithstanding the holding of the Court of Appeals to the contrary, to permit the Government to place into evidence petitioner's Selective Service file and permit the same to be taken by the jury and at the same time depriving petitioner of the opportunity to offer evidence explaining the contents of the Selective Service file.

VI.

Did the Trial Court commit a prejudicial error notwithstanding the Court of Appeals' holding to the contrary, to refuse an order requested by petitioner to have the Hearing Officer's report produced when the Department of Justice's recommendation addressed to the Appeal Board referred to such Hearing Officer's report, and when petitioner challenged the truthfulness of such recommendation as it was based on the Hearing Officer's report.

STATEMENT OF THE CASE.

A one-count indictment filed in the United States District Court for the Northern District of Illinois, Eastern Division, charged petitioner with refusal to obey the order of induction of his Local Board of the Selective Service System, No. 177, Sullivan, Illinois, in violation of Sec. 462, Title 50, App. U.S.C. (R 2, 3). On his plea of not guilty, following a trial by jury, he was found guilty (R 55). He was sentenced to two years imprisonment and to a fine of $1,000 and cost of prosecution (R 56). On appeal to the United States Court of Appeals for the Seventh Circuit, the judgment was affirmed (R 66).

The trial proceedings may be summarized as follows;

1. After identifying it, the Government offered into evidence petitioner's Selective Service file. Petitioner objected to many of those documents and particularly to Exhibit B-16 (SR 50)* on the ground that the same refers to "the information given by the registrant to Mr. F. M. Brittingham, a Hearing Officer of the Department of Justice", while the Selective Service file contains no part of such information, not even a summary thereof (R 8). Over objections, the file was admitted into evidence (R 7, 8). The petitioner moved that the Government be ordered to produce the Hearing Officer's report, which motion was denied (R 9). Testimony showed that petitioner appeared at the Chicago Induction Center on September 14, 1960, and when asked to take a step forward, indicating his entering the Armed Forces, he remained standing (R 12). Thereupon the Government rested and the petitioner moved for a judgment of acquittal on the ground that the evidence did not show

* Reference to the Supplemental Transcript of Record will be made thus: (S R .....)

a basis in fact to support the classification given to him. The motion was denied (R 16).

2. Felix Hagerman, the assistant pastor of the Church of Jesus Christ of Sullivan, Illinois, to which church the petitioner belongs, and who is also an officer of the Community Industries Ltd. of the same city and which employs petitioner, testified (R 20) that the Church is not a manufacturing organization and it never was; that the company is an Illinois corporation owned by its stockholders, and that this company has never manufactured ammunition, or war goods (R 20). According to Hagerman, petitioner is employed by the company in its candy division, doing shipping and packaging. He is an hourly paid employee, with no managerial rights; that he is a good member of the Church and so was for many years (R 18, 19). The company has three divisions, one making garden machinery, another dresses, and the third candy; that the dress division in times past, has manufactured tents, and that in recent years some of the candy has been sold to Government sources (R 19). This witness was connected with the company for the last fifteen years, and during that time, it never manufactured any kind of valves used on naval vessels, and he knows that the company never made any naval equipment; that he, upon defense counsel's request, checked the records of the company and found that during World War II, the garden-tractor division, operating as a machine shop at that time, did work for the Crane Company of Chicago, and did some machining on valves for that company; where those valves were used, he did not know (R 20). Contrary to the statement in Exhibit B-16 (SR 50) in evidence to the effect that "Community Industries does not manufacture munitions in the ordinary sense of the word" (SR 51), Hagerman stated

that the company did not manufacture munitions in any sense of the word. He was not permitted to testify whether he ever heard any member of Local Board No. 177 of Sullivan, Illinois, say that no one in the jurisdiction of that Board does, or will receive 1-O classification (conscientious objectors exempted both from combatant and non-combatant service) (R 21, 22). Thereupon the Government moved and the motion was granted that Hagerman's testimony be stricken in its entirety except with reference to the reputation of petitioner, which reputation was testified to as excellent (R 23).

The petitioner offered proof that if his witness Hagerman would have been permitted to testify, he would have testified substantially as he testified before, and which testimony was stricken, and in addition, that he further would have testified that the Draft Board was biased against petitioner and that he bases it on the fact that he heard a member of Local Draft Board 177, stating that no one in Sullivan received or will receive a 1-O classification, for the reason that whenever a registrant gets a 1-O classification, another boy has to take his place to satisfy the Board's quota. He heard a Draft Board member saying that it is unfair for one to go into service when "others solely because of religious training and beliefs are exempted from doing so" (R 24, 25). Pursuant to the offer of proof, witness Hagerman would have testified that the statement of the Department of Justice directed to the Appeal Board (Exhibit B-16) (SR 50) is false when it states that the members of his Church were willing to manufacture anything in war time for the Government. To the contrary, the Church members are abiding by all laws of the land except those which compel them to act against their conscience and against the commands of the Lord, therefore, the mem-

bers of the Church would refuse to manufacture any war material that is used for destructive purposes. The offer of proof was objected to by the Government and the objection was sustained. (R 25, 26).

3. Petitioner testified that he is 24 years of age; lives in Sullivan, Illinois; that he is married and works in the candy division of the Community Industries Ltd., where he is packaging candy bars and he is a receiving clerk; that he has nothing to do with the sale or contracting of merchandise; that he was working in the candy division for 8 years; he was raised in the Church of Jesus Christ of which he is a member; so are his parents. He finished grade school and 2 years of high school. Petitioner further testified that following the teachings of his Church, he does not smoke or drink, and would not use force even in self defense. Petitioner was not permitted to answer whether he believes in a Supreme Being, because the Trial Court stated that he made an answer in the Selective Service file and that "the jury will see all of these documents. I intend to send them to the jury room for their examination" (R 29). The Government objected to the questions whether petitioner appeared before the Hearing Officer, Brittingham; what he said to the Hearing Officer concerning the basis of his objection to military service; whether the company employing him manufactured munitions or not; did he say anything to the Hearing Officer about any kind of valves used on naval vessels and allegedly manufactured by the company employing him. The objections were sustained (R 29). So was the objection to the question whether petitioner heard the Hearing Officer stating that he will recommend 1-O classification for him (R 30).

The Government also objected to questions whether petitioner ever worked for a company that manufactured

war material; whether he presently manufactured war material; whether he would manufacture war material; whether he made the statement before the Hearing Officer attributed to him in Government Exhibit B-16 (SR 50); whether at the time when he failed to take the step forward at the Induction Center, he found himself confronted with a conflict between law of the Lord and the law given by man; whether he knew at that time that there was a law providing that no person is to be subject to military service who was conscientiously opposed to it; whether he believed at that time that he was entitled to a full conscientious objector classification, and whether at the time when he remained standing at the Induction Center, he intended to violate any law. Objections were sustained (R 26 to 35).

Petitioner made an offer of proof that he was a member of the Church of Jesus Christ of Sullivan, Illinois; that he was brought up by his parents in accordance with the tenets of the Church and fully accepts the tenets thereof. Since 1954, he is employed by the Community Industries Ltd. in its Lucy Ellen candy division; that he registered with his Local Board #177, and in his classification questionnaire he truthfully stated that "by reason of religious training and belief, I am conscientiously opposed to participation in war of any form", and that he asked for 1-O classification. He answered the questionnaire, knowing the penalty for making a false statement. When he received his Special Form for Conscientious Objectors, he stated therein that "I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces . . .": He knew when he completed this questionnaire that under the Universal Military

Training and Service Act, he was entitled to claim a conscientious objector classification to all military service; he was ready, willing and able to perform for a period of 24 consecutive months such civilian work in the maintenance of national health, safety and interest, as the Local Board deemed appropriate; that he believed in a Supreme Being; he received his religious training and belief from his parents and from the Church, to which he belonged, particularly from the pastor thereof, Leah Harshman; that he stated in his questionnaire that he does not believe in using force, even in self defense; that he doesn't believe in being yoked with unbelievers; and that he tries to do good to his enemies; that in accordance with the Church tenets, he believes that one ought to "Return Good for Evil . . . to Love your enemies and do them good . . ."; that he believes in living his life in accordance with the Bible and his conscience; he doesn't believe that he can fight against his enemies and do them good; he could not, in good conscience, become, as a noncombatant a member of the Army. He believes, too, that to be connected with any organization, the main purpose of which is fighting, is contrary to God's command of no retaliation; that he was taught and believes in non-violence against evil and to overcome evil with good; that in any conflict between the Law of Love and other laws he must choose obedience to the Law of Love (R 35 to 38).

The offer of proof further submitted that the classification given to him whereby he was assigned to noncombatant status was wrong, and therefore, he appeared before the Local Board to explain why he felt being justified in claiming full conscientious objector status; that within 24 hours following his personal appearance before the Local Board, he prepared Government Exhibit B-12, (SR 47) in which he set forth the substance of the con-

versation between himself and the Draft Board members. He was again classified as a noncombatant, (1-A-O) and therefore, he appealed to the Appeal Board, and sent to the Board a letter (Government Exhibit B-17) (SR 57), in which he referred to his hearing given to him by Mr. F. M. Brittingham a Hearing Officer of the Department of Justice. In this letter, he attempted to refute the false and erroneous statements made by T. Oscar Smith of the United States Department of Justice in his recommendation to the Appeal Board (Exhibit B-16) (SR 50); that he attempted to refute Mr. Smith's statement in Exhibit B-16 as false and erroneous in that he did not tell Mr. Brittingham that the basis of his opposition to military service rested upon the Commandment "Thou shalt not kill", but upon the command, "Love your enemies, do good to them who do you evil"; that he did not state to the Hearing Officer that "although Community Industries does not manufacture munitions in the ordinary sense of the word, they do manufacture other items for military consumption such as tents, WAC uniforms, candy for rations, and some sort of valve used on naval vessels and other items". To the contrary, he told the Hearing Officer that his Church never manufactured anything; that it is a spiritual and not a business organization. He stated that Community Industries, for which he was working, never manufactured munitions in any sense of the word. They manufactured only for civilian consumption, some of which may be used for military consumption as well Contrary to T. Oscar Smith's statement, the petitioner would have testified that he never knew that Community Industries ever manufactured any kind of valve used on naval vessels; that he never stated to the Hearing Officer or to anyone else that "it would not be considered immoral or a violation of their Christian duty to manufacture ammu-

nition", and that Mr. Smith's statement is further false because petitioner never stated to anyone, including the Hearing Officer, that the Church members' "reluctance to manufacture munitions is not a matter of religious beliefs but merely a matter of preference" (R 38 to 40).

Petitioner would have further testified that he was and is in agreement with the statement of the pastor of the Church that the members thereof "would not willingly engage in the production of any article used directly to cause death"; because that would be repugnant to his principles and religious mission in this world; that he would participate in the manufacture of goods for civilian consumption even though the same may be used by the military, but he would not participate in the manufacture of any material used for destructive purposes; he would not participate in the manufacture of those things, the purpose of which is to destroy life on this earth. That he did not take the step forward at the Induction Center not because he intended to violate any of the laws, but because in taking the step forward, he would have violated his religious training and belief. When he failed to take the step forward, he knew of the Military Training and Service Act, which provides that nothing in the law should be construed to require any person who was conscientiously opposed to participation in combatant and noncombatant service to be made to perform such service. He knew of the alternative service provisions of the law, which provides for work contributing to maintenance of national health, safety and interest, and that he was willing to perform such civilian work. He believed that he had the right not to take the step forward and thereby to test whether the Draft and Appeal Boards could order him into noncombatant military service, notwithstanding his just claim to full exemption. The Government objected

to the offer of proof, and the objection was sustained (R 41).

4. A number of character witnesses testified to petitioner's good reputation (R 43, 44), and thereupon the petitioner rested and presented his Motion for Judgment of Acquittal, which Motion was denied (R 44, 45).

5. Petitioner submitted a number of instructions, among them one embodying Section 6 (j) of the Universal Military and Training Act (Title 50 App. U.S.C. (R 50, 52, Instruction "G"), and also on the matter of bias and prejudice of the Draft Board (R 54, Instructions "N", "O", "Q", "R", and "S"); on petitioner's innocent motive in refusing to take the step forward at the Induction Center (R 50, Instruction "Y"); on the failure of a party to produce evidence in his possession (R 52, Instruction "W"); on the role of the Hearing Officer and the recommendation of the Department of Justice to the Appeal Board (R 53, Instruction "K"); on the order of the Draft Board given in disregard of petitioner's procedural rights (R 15, Instruction "P" and R 55, Instruction "T"). The Government objected to all of these Instructions, and the objections were sustained (R 50 to 55).

6. The jury found the defendant guilty as charged in the indictment, and judgment of conviction was entered on the verdict (R 55).

The petitioner moved for a new trial on the ground that the verdict is contrary to the law and the evidence. The motion was denied (R 55).

7. Petitioner was given an opportunity to speak on his own behalf, and thereafter the Trial Court sentenced him to 2 years and fined him the sum of $1,000 and cost of prosecution. His appeal bond was set in the amount of $5,000 (R 56).

8. Petitioner's request that the sentence be entered under Section 4208 of the Rules of Criminal Procedure was rejected by the Trial Court (R 56).

9. Notice of appeal to the United States Court of Appeals for the Seventh Circuit was filed on October 3, 1961, (R 50). The opinion of the Court of Appeals was dated August 20, 1962 (R 60, 66). The judgment of the Court of Appeals was entered on the same day, affirming the judgment of the District Court (R 66). Petition for a rehearing was denied on September 14, 1962.

10. A petition for Writ of Certiorari was filed on October 15, 1962, and the same was allowed on December 17, 1962 (R 67).

SUMMARY OF ARGUMENT.

I.

The Court of Appeals misread and misinterpreted the holding of this Court in *Dickinson* v. *United States*, 346 U.S. 389, 74 S. Ct. 152. Petitioner claimed that having established *prima facie*, that he was entitled to a full conscientious objector classification, exempting him from both combatant and non-combatant service (1-O) and his sincerity in making his claim never having been questioned, he was entitled to such 1-O classification in absence of evidence in the record contrary to his claim. The Court of Appeals ruled against petitioner's contention by holding that the *Dickinson* case is inapplicable here because that holding applies only to persons claiming ministerial status, a matter to be decided on objective facts.

The interpretation of the Court of Appeals of the *Dickinson* case is erroneous in face of other holdings of this Court and the holdings of various other Circuits of the United States Court of Appeals.

II.

It was error on the part of the Court of Appeals to hold that the Hearing Officer of the Department of Justice found anything in the absence of the Hearing Officer's report. This holding is particularly grievous because the Trial Court refused to order the Government to produce the Hearing Officer's report notwithstanding petitioner's offer of proof which contradicted substantially all statements contained in the Department of Justice's recommendation (Exh. B-16) (SR 50) referring to the alleged Hearing Officer's report.

The Court of Appeals erred in holding on the basis of the "secret" Hearing Officer's report that petitioner chose, merely as a preference and not as a religious belief, to refuse to manufacture munitions in face of the petitioner's offer of proof rejected by the Trial Court that he would not, because of his religious training, manufacture anything used for destructive purposes. The Court of Appeals erred to the prejudice of the petitioner when it relied on the "secret" Hearing Officer's report as a basis in fact to support the classification given to petitioner, *United States* v. *Wilson*, 215 F. 2d 453, *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403, *Batterton* v. *United States*, 260 F. 2d 233.

III.

The offer of proof on behalf of petitioner's witness, Hagerman (R 24) and his testimony subsequently stricken (R 21 to 23) and petitioner's own offer of proof (R 38) and Government's own Exhibit B-12 (SR 47), was undenied and undeniably showed bias of the Local Board and showed a disregard of the law by that Board. Nevertheless, the Appeal Court held that since the Appeal Board provides a *de novo* proceeding, there is no showing

that the prejudice of the Local Board, if any "corrupted the decision of the Appeal Board". This holding of the Court of Appeals is clearly erroneous because petitioner was entitled to a fair and unbiased consideration on every step of the proceedings. The error of the Court of Appeals is compounded because both the Local Board and the Hearing Officer who saw petitioner face to face were convinced of petitioner's sincerity in making his claim (Exhibit B-16) (SR 50), while the Appeal Board had no such opportunity to face petitioner. Its *de novo* proceedings were based solely on documentary evidence.

It was further error to rely on Government's Exhibit B-16 (SR 50), which was not only attempted to be contradicted by petitioner's various offers of proof, but also by his request for an order to produce the Hearing Officer's report and by the Government's own Exhibit B-12 (SR 47). *Sicurella* v. *United States*, 348 U.S. 385; 75 S. Ct. 403.

IV.

The Court of Appeals in accepting the statements contained in the Department of Justice's recommendation to the Appeal Board (Exhibit B-16) (SR 50) as gospel truth notwithstanding of the repeated attempts on the part of petitioner to show that the recommendations were based on falsehoods, departed from the basic tenet of the Anglo-Saxon law which teaches that one charged with a crime (even when the alleged crime is based on one's religious teaching and belief) must be found guilty beyond a reasonable doubt. The Court of Appeals, contrary to that teaching, deprived petitioner of the benefit of this Court's holding in *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403, and of the benefit of *Batterton* v. *United States*, 260 F. 2d 233.

V.

If it is error to submit the Selective Service file to go to the jury, as the Court of Appeals held, such error is not eliminated by the fact that the jury was permitted to hear oral evidence as to the substance of the contents of that file. The Court of Appeals erred when it held that no prejudice resulted to petitioner. The error was the more prejudicial because petitioner was not permitted by the Trial Court to explain some of the matters, contained in the file which went before the jury and he was not permitted to show which part of the file prepared by him contradicted other documents in the file, *Cox* v. *United States*, 332 U.S. 442, 68 S. Ct. 115, *Smith* v. *United States*, 157 F. 2d 176.

VI.

The Court of Appeals erred to the prejudice of petitioner when it held that the Trial Court's refusal to order the production of Department of Justice's Hearing Officer's report was no error. The Court of Appeals erred because in the instant case the Hearing Officer's report was crucial to prove or disprove petitioner's claim that the Department of Justice's recommendation to the Appeal Board (Exhibit B-16) (SR 50) was false, *Gonzales* v. *United States*, 364 U.S. 59, 80 S. Ct. 1554.

ARGUMENT.

I.

THE COURT OF APPEALS MISREAD THIS COURT'S DECISION IN DICKINSON V. UNITED STATES, 346 U.S. 389, 74 S. Ct. 152, AND THEREBY DEPRIVED PETITIONER OF THE BENEFIT OF THAT HOLDING.

In the opinion of the Court of Appeals (R 60 to 66), *Witmer* v. *United States*, 348 U.S. 375, 75 S.Ct. 392 is cited to the effect that "in that case, the Court interpreted *Dickinson* to hold that there was no basis in fact for the classification because there was no evidence, 'incompatible with' *Dickinson's* proof, to rebut his prima facie case, made out by objective facts". The Court of Appeals looks upon the 'objective facts' as the determinant in this Court's holding in the *Dickinson* case, and therefore, it says "that distinguished Witmer's case from Dickinson's and distinguishes Parker's. In *Witmer* and here, the question cannot be determined on objective facts such as Dickinson's which involved ministerial status". That such narrow interpretation cannot be foisted upon *Dickinson* is clear because this Court in that case relied on *Estep* v. *United States*, 327 U. S. 114, 66 S. Ct. 423, when it quoted therefrom to the effect that ". . . the question of jurisdiction of the Local Board is reached only if there is no basis in fact for the classification which it gave the registrant" (on page 156). The dissenting opinion of Justice Jackson (joined by Justices Burton and Minton) says that "This Court held in *Estep* v. *United States*, 327 U.S. 114, 66 S. Ct. 423, 427, 90 L. Ed. 567, that in a criminal prosecution under § 11 of the Selective Service

Act, the Court must allow the registrant to prove his local draft board acted without jurisdiction in classifying him for service".

Reading the *Dickinson* and *Estep* cases, it is patently clear that the restriction placed by the Court of Appeals for the 7th Circuit in the *Dickinson* case cannot be upheld. Nowhere in the *Dickinson* case did this Court say (nor did any other Court of Appeals as far as our research discloses) that the *prima facie* case made out by a registrant may be disregarded by the Board *except* when one claims ministerial classification, even though the record discloses no *basis in fact* that is contrary to the registrant's claim. But that is exactly what the Court of Appeals held when it said (R 63) "Once *Dickinson's* status was determined prima facie, the Government was required to produce a basis in fact on which the Court could decide his claims were not as stated. In Parker's case the question is whether there is affirmative evidence produced by the Government that he has not painted a complete or accurate picture, *Witmer* v. *United States*, 348 U. S. 375, 382 (1955)." The juxtaposition of the above two sentences in the Court of Appeals' opinion indicates clearly that that Court applies the teaching of the *Dickinson's* decision of this Court solely to those who claim ministerial exemption and then if a *prima facie* case is established by such minister to the exemption, then the Government is required to produce a *basis in fact* contrary to his claim. But not so in the case of this petitioner, because in his case, the Court looks to affirmative evidence that proves that he has not "painted a complete or accurate picture". While it is difficult and probably impossible to fathom the distinction between the content of the term "a basis in fact" and the content of the term "affirmative evidence", nevertheless, it is clear that the Court of Appeals

did restrict the *Dickinson* holding and distinguished that case in disfavor of petitioner.

The Court of Appeals also relies on its own holding in *United States* v. *Simmons* (*Seventh Circuit*), 213 F. 2d 901; (reversed by this Court on other grounds, 348 U.S. 397) and quotes from *Witmer* v. *United States*, 348 U.S. 375, to the effect that " 'When the record discloses any evidence of whatever nature which is incompatible with the claim of exemption', court may not inquire further as to the correctness of Board's order". Petitioner submits that this Court in the *Witmer* case spoke of legal evidence and not something or anything which may be in the record. This Court did not hold in that case, or in any other case for that matter, that it is sufficient for the Government in a Selective Service case to present a letter from the Department of Justice directed to the Appeal Board and look upon the statements therein contained as evidence satisfying the *Witmer* holding, particularly not when as here, petitioner challenged the veracity of many of those statements and when he particularly offered proof (after his testimony was suppressed) to contradict many, if not all the statements in the letter from the Department of Justice.

Petitioner submits that this Court's holding in the *Dickinson* case applies not only to those who claim ministerial exemption, but it applies also to those, as petitioner, whose claim can be tested by subjective evaluation, as against the objective evaluation applied to *Dickinson*. The question of sincerity, truthfulness, honesty and integrity may not be measured by mechanical tools, but measured they can be. In fact it was done by the Local Board, which not only did not question petitioner's sincerity, but stated that it believed him to be so. The Hearing Officer of the Department of Justice, again using

subjective evaluation, found him sincere, and these were the two instances where petitioner was face to face to the inquirer. He submits that the teachings of *Dickinson*, *Sicurella*, *Simmons* and *Witmer* and on the whole of the record here, there is no *basis in fact* for the Board's denial of his claim to be fully exempt from all military service. There is no *basis in fact* for the Board's classifying him as one to be exempted from combatant service only.

On the record and on the law, petitioner submits that his conviction cannot be upheld.

II.

ON THE RECORD THE SOLE GROUND ON WHICH THE COURTS RULED THAT THERE WAS A BASIS IN FACT FOR THE DENIAL OF PETITIONER'S CLAIM FOR EXEMPTION FROM ALL MILITARY SERVICE WAS THE INCIDENT THAT HE WAS EMPLOYED IN A CANDY FACTORY AS A LABORER, A SMALL PART OF THE PRODUCTS OF WHICH FACTORY WERE PURCHASED BY THE ARMED FORCES. THIS RULING OF THE COURTS BELOW WAS ERRONEOUS.

The Government introduced into evidence from petitioner's Selective Service file a letter (Exhibit B-16) (SR 50) that was written by the Department of Justice to the Appeal Board as its recommendation concerning petitioner's classification (R 6, 7). This Exhibit refers to petitioner's appearance before the Hearing Officer appointed by the Department, and states that that officer "was impressed by the truthful and frank attitude of the registrant during the course of the hearing". He concluded that "there is no doubt that the registrant is sincere and a conscientious member of his denomination". The Government also introduced into evidence

as its Exhibit B-18, which shows that the Local Board similarly found petitioner to be sincere and honest, and that he is a good member of his Church. We may assume that the Court of Appeals followed the holding of this Court in the *Dickinson* case, and particularly that it had before it Justice Jackson's dissenting opinion. That dissent holds that "The board must find and record affirmative evidence that he has misrepresented the case—evidence which is then put to the test of substantiality by the courts. In short, the board must build a record". We may so assume that the Court of Appeals did just that, because it is said on page 3 of the opinion (R 62):

> "The Department of Justice hearing officer on Parker's appeal to the Appeal Board found that Parker worked for Community Industries, a Harshmanite enterprise, which produced WAC uniforms, candy for army rations, valves used on naval vessels, and other items usable in war; that Parker did not consider it immoral or a violation of his Christian duty to manufacture ammunition; that Parker viewed the Harshmanite 'reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference;' and that Parker subscribed to the beliefs and opinions of the Harshmanites."

If the above paragraph sums up the record which the board built, then we say that such cannot be considered a *basis in fact* on which to classify petitioner contrary to his *prima facie* established case. It cannot be so held because the above summary of the Court of Appeals is taken not from the record, but from the letter of the Department of Justice (Exhibit B-16), (SR 50) which was challenged by petitioner during his trial as to its factuality and veracity.

The Court of Appeals held that the Hearing Officer found certain facts. This is a misstatement, because the Court of Appeals cannot know what the Hearing Officer found because the Trial Court refused to order his report into Court, even though the same Trial Court admitted into evidence the Department of Justice's letter (Exhibit B-16) (SR 50) which was challenged by petitioner as to that portion of it which referred to the Hearing Officer's report.

There is a further misstatement in the Court of Appeals summary quoted above, since the Community Industries employing the petitioner is *not a Harshmanite enterprise,* but it is a simple Illinois corporation owned by the stockholders. The Court of Appeals is further misled by the Department of Justice's letter (Exhibit B-16) (SR 50), when it held that petitioner's employing company "produced WAC uniforms." There is not one word of evidence in the record that such is the case, and the only source that the Court of Appeals had was the challenged letter of the Department of Justice. The Court of Appeals was further misled when it held that the employing company produced "candy and Army rations, valves used on naval vessels and other items usable in war." This is again taken from the Government's Exhibit B-16) (SR 50), the veracity of which was so clearly challenged by petitioner (R. 8, 9). The only evidence as to any kind of goods purchased by the Government from the dress division of the company is the testimony of witness Hagerman, which testimony clearly contradicted the statements made in Exhibit B-16 (SR 50), but this evidence was stricken by the Court on the motion of the Government (R 23). The offer of proof of witness Hagerman (R 24 to 26) clearly contradicts the statement contained in Government Exhibit B-16) (SR 50).

There is a particular error in the above quoted paragraph of the Court of Appeals' opinion which refers to Community Industries as having produced "valves used on naval vessels and other items usable in war." Disregarding the Department of Justice's challenged letter (Exhibit B-16) (SR 50), there is not one iota of evidence remaining in the record that would or could justify the Court of Appeals' holding. Petitioner's witness Hagerman clearly denied that statement (R 20) and when his testimony was stricken, he denied it in his offer of proof (R 24 to 26).

There is testimony of witness Hagerman which refers to valves. However, his testimony (subsequently stricken by the Court on the Government's motion) was to the effect that he, upon the request of defense attorney,

> "checked the records of Community Industries to find out whether or not there was ever any kind of valve used on naval vessels and other items manufactured by the company. I have found that during World War II the division that is now manufacturing garden tractors operated as a machine shop. At that time work was done for the Crane Company in Chicago. At that time some machining was done on valves. That is all I have been able to determine from my checking in the records. Whether those valves were ever used on naval vessels or not, I have no knowledge. The Community Industries made those valves only for the Crane Company" (R 20).

By what stretch of imagination or rather fantasy can it be said on the basis of such record that petitioner's employer produced "valves used on naval vessels"?

There is a further statement in the Court of Appeals' opinion which is difficult to contradict when it says that Community Industries produced "other items usable in

war." We are hard put to think of anything produced that war could not consume, be it bread, oyster forks to be used in officer messes, medicine to be used in military hospitals, bandages, etc. However, petitioner submits that such a general statement may not be considered as a basis for his disqualification as a conscientious objector.

The Court of Appeals also found that petitioner

> "did not consider it immoral or a violation of his Christian duty to manufacture ammunition; that Parker viewed the Harshmanite 'reluctance to manufacture munitions * * * not [as] a matter of religious belief, but merely a matter of preference'; and that Parker subscribed to the beliefs and opinions of the Harshmanites."

Such a holding is not bottomed on any other part of the record but upon the contradicted statement of the Department of Justice (Exhibit B-16) (SR 50). Otherwise, the record is wholly to the contrary, because a defense witness who is the assistant pastor of the Church of Jesus Christ stated that "the company did not manufacture munitions in any sense of the word" (R 20). This witness' testimony was in direct contradiction to the statement contained in Exhibit B-16 (SR 50), which says that "Community Industries does not manufacture munitions in the ordinary sense of the word." While this testimony was stricken by the Trial Court (R 23) the witness offered proof to the effect that the statement contained in Exhibit B-16 (SR 50) was false to the effect

> "that the minister of the church declared that the church would be willing to manufacture anything in wartime for the Government is not true, that the minister of the church never so stated; that the minister of the church stated that the church members are abiding by all laws adopted by the Govern-

> ment except those which compel them to act against their conscience and against their understanding of the Commands of the Lord; that they would manufacture anything that can be used for civilian purposes because the church members under the teachings of the church do not feel that it is the responsibility of the church what happens to the material . . ." (R 25).

The above offer of proof fairly contradicts, if not destroys, the basis of the Court of Appeals' holding as to petitioner's "'reluctance to manufacture munitions . . . not [as] a matter of religious belief, but merely a matter of preference,' and that Parker subscribed to the beliefs and opinions of the Harshmanites."

Petitioner was just as positive in testifying or attempting to do so contrary to the holdings of the Court of Appeals. In that, he offered proof that he did not tell the Hearing Officer that "although Community Industries does not manufacture munitions in the ordinary sense of the word, they do manufacture other items for military consumption such as tents, WAC uniforms, candy for rations and some sort of valve used on naval vessels" (R 30). To the contrary, the Church to which he belongs, petitioner continued in his offer of proof, never manufactured anything; that it never owned any manufacturing organization, since it is a spiritual and not a business organization; that he stated to the contrary; that his employing company is owned by some members, but it only manufactured items for civilian consumption, some of which may be used for military consumption as well.

Petitioner further offered to prove that he never knew that Community Industries ever manufactured any kind of valve, and to that extent, Government's Exhibit B-16 (SR 50) is false. He never stated to the Hearing Officer

or to anyone else that "it would not be considered immoral or a violation of his Christian duty to manufacture ammunition" and that Exhibit B-16 (SR 50) is further false in that he did not state to the Hearing Officer or to anyone else that the Church members' "reluctance to manufacture munitions is not a matter of religious belief but merely a matter of preference" (R. 40).

Petitioner made an offer of proof after there was an objection by the Government and he was prevented by the Court from answering questions directed to him during his defense in the Trial Court (R 30 to 33). Petitioner attempted to put the record straight, but he was not permitted to do so. However, the rejected offers of proof, that of his witness and of himself, presented a clear picture as to fact against fantasy of Exhibit B-16 (SR 50).

The facts are that petitioner was working for the past five years for the Community Industries Ltd., an Illinois corporation, in the candy division of that company. He was paid on an hourly basis to do packing, shipping and receiving. He had no functions other than that of a clerk and, of course, had no managerial functions whatsoever, nor was he responsible for the sale of the products.

Such employment cannot and ought not be considered a basis in fact for the board's denial of his prima facie established claim for 1-O classification. Nor can his employment as a shipping and receiving clerk be considered a basis in fact for the board's classifying him as 1-A-O, contrary to his claim for full exemption based on his religious training and belief. Petitioner admits that some of the candy which he was handling as shipping and receiving clerk may have been purchased by the Govern-

ment. Nevertheless, he says that even then his employment is not basis in fact as that term was considered by this Court in *Dickinson, Sicurella, Witmer,* and *Gonzales* and other cases wherein the term became material.

It appears to the Petitioner that this Court's distinction between wars and theocratic wars is apropos here and it requires just a logical paraphrasing to support Petitioner's contention. This Court said that a draftee's willingness to fight at Armageddon does not indicate his willingness to participate in war because:

> "Congress had in mind real shooting wars when it referred to participation in war in any form—actual military conflicts between nations of the earth in our time—wars with bombs and bullets, tanks, planes and rockets. We believe the reasoning of the Government in denying petitioner's claim is so far removed from any possible congressional intent that it is erroneous as a matter of law." *Sicurella* v. *United States,* 348 U.S. 385, 75 S.Ct. 403, 406.

The Government's evidence, Exhibit B-16 (SR 50)—so heavily relied on by the Court of Appeals, even though it is an *ex parte* document—shows that Petitioner and other members of the Church of Jesus Christ of Sullivan, Illinois are "strangers in the land"—if not of the Philistines,—then that of the people of Sullivan. It is clear that even though strangers they be, they must find work so that they may live; however, their religious training requires them to labor in accordance with their own beliefs. The Community Industries gives them that opportunity and possibility. To deprive Petitioner of his prima facie established claim to exemption from all military service because he was so employed, would be to say to him that he must choose between starving or forfeiting his right to follow his conscience.

The Court of Appeals for the Seventh Circuit itself held that such choice cannot be exacted even from a conscientious objector when it decided *U.S.* v. *Wilson,* 215 F. 2d 443, wherein Wilson:

> "When asked a hypothetical question as to whether he could continue his job, *i.e.,* as a railroad telegraph operator, if he knew that the trains operated by the railroad were carrying troops to combat service, he stated that he would do so unless the battle front was near his place of employment. When asked how, as a part of his job, he could assist in the routing and scheduling of trains carrying troops to the west coast for overseas combat duty, he stated that so long as he was not told directly that such was their destination he could see no relation between his job and the war effort. He stated finally that there was no capacity in which he could serve so long as it required wearing the uniform of the United States."

The Court, disagreeing with the Government's contention that such employment disqualifies Wilson as a conscientious objector held that:

> "Neither do we think the defendant's employment as a railroad telegraph operator was in any way inconsistent with his claim to exemption as a conscientious objector. Section 6(j) of the Act, 50 U.S. C.A. App. Sec. 456(j), provides exemption for persons 'conscientiously opposed to 'participation in war in any form.' *It would be wholly unrealistic to construe this language to mean that a person whose civilian employment indirectly contributed to the war effort could not, therefore, meet the statutory test for exemption.* Such a construction of the Act would completely nullify the provisions granting exemption to conscientious objectors, for *it is difficult to conceive of any gainful activity which in periods of extensive mobilization and training, would not in some manner aid the common purpose.* Moreover,

> *the Act expressly recognizes that one may engage in civilian work contributing to the national welfare without thereby losing the right to be classified as a conscientious objector.* Section 6(j) provides that persons conscientiously opposed to noncombatant service in the armed forces shall be ordered to perform 'such civilian work contributing to the maintenance of the national health, safety, or interest; as may be considered appropriate by the local board.' It is perfectly clear in this case that the nature of the defendant's civilian occupation could not be a basis in fact for denying him the status of a conscientious objector." (Emphasis ours.)

If we juxtapose the decision of the Court of Appeals for the Seventh Circuit in the *Wilson* and in this case, we must conclude that that Court discovered how to dance *pas de deux* by itself. No composer ever thought that one person can take simultaneous steps in opposite directions. The Court of Appeals here was able to do so.

We submit that the Court of Appeals was correct when it decided the *Wilson* case but grievously erred to the prejudice of the Petitioner in this case. The present holding would make it impossible for any conscientious objector ever to be engaged in any activity which may—however remotely—contribute to the war effort. In fact, a conscientious objector, if the present holding of the Court of Appeals stands, would have to refuse to pay his taxes to the federal government since a large portion of it goes to buy bullets, polaris missiles, hydrogen bombs and other destructive implements of war. This cannot be what Congress had in mind and we are hopeful that this Court will establish clearly by its reversal of the instant case that the law of the land is not as was interpreted by the Court of Appeals.

The pastor of the church wrote to petitioner's Draft Board and the writing was introduced by the government as Exhibit B-7 (SR 34). The pastor's statement, we submit, sums up the problem because,

> "If it is wrong to produce anything which is helpful to the government in time of war then it is wrong to engage in farming at such a time. In fact, logic would force one at such a time to refuse to engage in any constructive effort. . . ."

Petitioner submits that this Court should declare that his and other innocuous employments, even though helpful to the government, is no basis in fact to deprive one of conscientious objector classification, who prima facie established that he is entitled to it. The judgment of the Court of Appeals ought to be reversed.

III.

THE LOCAL BOARD WHILE RECOGNIZING PETITIONER'S SINCERITY IN CLAIMING EXEMPTION FROM ALL MILITARY SERVICE, REFUSED TO GRANT HIM THE REQUESTED CLASSIFICATION ON ADMITTEDLY ILLEGAL GROUNDS. THE APPEAL BOARD CONSIDERED HIM DE NOVO AND LET THE LOCAL BOARD'S CLASSIFICATION STAND. DID THIS DE NOVO CLASSIFICATION OVERCOME THE LOCAL BOARD'S ILLEGAL CONDUCT AND DID IT MEND THE LACK OF DUE PROCESS?

The government introduced into evidence petitioner's Selective Service file including Exhibit B-12 (SR 47). This exhibit was prepared by him within 24 hours following his personal appearance before the local board (R 7 and 31). He did recapitulate the conversation that he had with the local board members as it transpired the day before and the recapitulation was never challenged by the government (R 31). Petitioner testified that:

"Mr. Bone (whose identity was not permitted by the trial court to be established by petitioner because the government objected, but whose identity appears from exhibit B-12 (SR 47) as one of the board members) said they would not give a 1-O classification to anyone at the present time for he did not think it was right for another boy to have to go into service for a boy who did not believe in going into the army or noncombatant service on account of religious belief. He felt the 1-A-O classification was for conscientious objectors" (R 31).

Petitioner argued before the Court of Appeals that such reasoning and the resultant classification based on such reasoning clearly indicates that the denial of his 1-O classification, theretofore prima facie established, was based neither on law nor on the rules and regulations of Selective Service. However, the Court of Appeals did not even inquire into whether the local board's action was contrary to due process or otherwise in violation of the law because of the alleged *de novo* classification by the Appeal Board. The Court of Appeals said on this point (R 64) that:

"The Local Board clerk testified that the Board 'felt they were doing their best to acknowledge the registrant's religion * * *' and thus, according to Parker, showed that emotion rather than the law permeated the Local Board proceeding. The only relevant issue before us in this case is the classification of the Appeal Board in its inder ndent, *de novo* proceeding. This proceeding superseded the Local Board's hearing because there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board. *United States* v. *Van Hook*, 7 Cir., 284 F. 2d 489, reversed and remanded for resentencing, 365 U.S. 609 (1961)" (R 64).

We have no quarrel with the holding that the Appeal Board's classification superseded that of the local board; however, we respectfully disagree with the holding of the Court of Appeals that

> ". . . there is nothing to show that the prejudice of the Local Board, if any, corrupted the decision of the Appeal Board . . ."

There is no denial as there cannot be, that the local board denied his claim to 1-O classification on some extraordinary nonlegal grounds. The Appeal Board that did not have a chance to see him, nor had a chance to talk to him, classified him *de novo*, but *mirabile dictu* left him in the selfsame classification that was given to him by the local board. However, can it be gainsaid that the clearly expressed bias and prejudice of the local board carried over to and was made its own by the Appeal Board and in consequence, the so-called classification *de novo* was but a sham and nothing more.

Petitioner also submits that the Department of Justice's recommendation, brimming with false statements, did influence the Appeal Board to his great prejudice. Petitioner attempted to testify in detail as to the falsehoods contained in government's Exhibit B-16 (SR 47) and when his testimony was not admitted because of government's objection (R 29-31), he made an offer of proof as to the falsehoods contained in the Department of Justice's recommendation B-16 (R 39 and 40).

In Government's Exhibit B-17 (SR 56-59) he challenged at least in part, the statements made by the Department of Justice in Exhibit B-16 (SR 50-53).

The Court of Appeals seemed to have adopted the argument presented by the government that since Parker did not contradict the Government's Exhibit B-16 (SR 47)

point by point, thereby he is precluded from challenging it in toto, at the time of his trial. Petitioner does not believe that this Court will hold him to such strict limitation, knowing that he is not tutored in law, that he did not finish high school, but only attended it two years (R 26). He believes that the court will not hold him to that strict rule since he was not and could not have been prepared to comply with the strict rules of legal procedure. He was working as a laborer and later as a receiving and shipping clerk from the age of 16 and when he was confronted with the need of answering Government's Exhibit 16 (SR 47) he was 19 years of age (R 26 and SR 50).

In *Conley* v. *Gibson*, 335 U.S. 41, 78 S.Ct. 99, this Court said:

> "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Query: If one misstep by counsel may not do away with a proper decision on the merits, how can a misstep by this untutored petitioner be held against him to the extent that his case be not judged on the merits.

This Court answered this question just recently when in *Foman* v. *Davis*, 83 S.Ct. 227 (1962) it said:

> "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. 'The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.' *Conley*

> v. *Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed. 2d 80. The Rules themselves provide that they are to be construed 'to secure the just, speedy, and inexpensive determination of every action.' Rule 1."

In footnote No. 5 of *Simmons* v. *United States*, 348 U.S. 397, 75 S.Ct. 397 on page 401, this Court held that:

> "Registrants are not to be treated as though they were engaged in formal litigation assisted by counsel. *United States ex rel. Berman* v. *Craig*, 3 Cir., 207 F.2d 888; *Smith* v. *United States*, 4 Cir., 157 F.2d 176."

Petitioner submits his hope, bolstered by the prior decisions of this Court, that the judgment against him will not be permitted to stand because the same is bottomed not on evidence, but rather on guesses on the part of the Court of Appeals and further because there is the red thread of bias and prejudice entwined throughout the proceedings. He was deprived of the due process of law when the court speculated and guessed that the bias of the draft board (if any) "may not" have prejudiced him at all. Not to reverse the judgment of the Court of Appeals for the Seventh Circuit would be tantamount to speculate and guess petitioner into the penitentiary. Petioner believes that this Court will not permit that to happen therefore, he asks that the judgment of the Court of Appeals be reversed.

IV.

THE TRIAL COURT ERRED TO THE GREAT PREJUDICE OF PETITIONER WHEN IT RULED THAT HE MAY NOT PRESENT EVIDENCE WHICH ATTEMPTED TO OVERCOME THE GOVERNMENT'S EX PARTE STATEMENT ALLEGING THAT HIS EMPLOYING COMPANY WAS MANUFACTURING IMPLEMENTS OF WAR. THE COURT OF APPEALS UPHOLDING THE TRIAL COURT ERRED SIMILARLY.

The opinion of the Court of Appeals for the Seventh Circuit holds (R 63) that:

> "Parker also relies upon *Batterton* v. *United States*, 8 Cir., 260 F.2d 233 (1958), which is not in his favor on the facts before us. And each case must 'of necessity be based on the particular beliefs of the individual.' *Sicurella* v. *United States*, 348 U.S. 385, 390 (1955). The court there said the record 'does not even by indirection,' deny Sicurella's sincere religious beliefs. Parker argues the record here as to him is like that record as to Sicurella. But Sicurella's sincerity was admitted and the court said 'we are therefore relieved of the task of searching the record for basis in fact to support a finding of insincerity.' p. 388."

The above must be read to the effect that while Sicurella's sincerity was admitted Parker's was not, even though the record is just to the contrary. The record shows that in those two instances where petitioner had the privilege of a personal appearance, that is before the Local Board and before the Hearing Officer of the Department of Justice, there was a positive finding that he was sincere. These two findings never were challenged or contradicted in any part of the record. Therefore, petitioner submits that the teaching of the *Sicurella* case applies to him, since his sincere religious beliefs were not denied "not

even by indirection", just as there was no such denial in the *Sicurella* case.

The Court of Appeals (R 63) sees

> ". . . no inconsistency in the Department of Justice and the Board recognizing Parker's sincerity of religious belief and the classification based on the admitted fact of his willingness to participate in the production of war goods."

Petitioner protests, as he protested before the Court of Appeals, that there was never any admission on his part but to the contrary, he claimed and attempted to show that it was NOT A FACT and that he was NOT WILLING to produce war goods. Where did the Court of Appeals find such alleged "admitted facts". The opinion of the Court of Appeals gives us the answer because it states (R 63) that:

> "The Department of Justice recommendation discloses Parker's view that 'it would not be considered immoral or a violation of their Christian duty to manufacture ammunitions * * *.' This fact would suffice to rebut Parker's prima facie showing."

So it is as petitioner repeatedly claimed, nothing but the *ex parte* recommendation emanating from the Department of Justice which discloses what the Court of Appeals pleases to call "admitted facts." It's strange, because it is contrary to every precept of criminal procedure and theory underlying it in our jurisprudence, to permit the prosecution to present an *ex parte* statement which allegedly discloses the "view of the accused." It is strange because it is contrary to all precepts that we know of, to accept such *ex parte* statement of the prosecution when the defendant attempted to present evidence in contradiction of such prosecution's statement and when his evidence was rejected by the trial court because of government's objec-

tion. The proof by petitioner denying the veracity of the prosecution's *ex parte* statement was similarly rejected. The Court of Appeals seems to be entirely oblivious of petitioner's proffered denial of the truth of the "Department of Justice recommendation" and, therefore, one wonders what are the facts remaining which the Court of Appeals held to "suffice to rebut Parker's prima facie showing."

The opinion of the Court of Appeals is a haunting one because there is a "leitmotiv" therein which perforce, reminds one of Aesop's Fables (with due apologies where apologies are due). One is reminded of Aesop's little lamb who was accused by the wolf of having disturbed the wolf's drinking water in the flowing river. The fact that the lamb was drinking below the wolf was held for naught, because it may have been the lamb's brother who did the thing charged against the poor little lamb. The fact that the little lamb had no brother was held for naught, because no argument of his was to be considered since the wolf had the strength to make his accusation stick, however baseless those accusations were.

The haunting picture does not disappear, but to the contrary, it comes into strong relief when the Court of Appeals for the Seventh Circuit holds that the Department of Justice recommendation submitted *ex parte* and attempted to be contradicted by petitioner nevertheless is considered to be "fact (which) would suffice to rebut Parker's *prima facie* showing."

Petitioner submits that the Court of Appeals should have inquired why the true facts as to the content of his religious belief were not permitted by the trial court to be disclosed, Why, when he challenged the Department of Justice recommendation and when in support of his challenge he asked for

an order to produce the Hearing Officer's report, did the prosecution object and was the objection sustained? (R 8, 9). Petitioner earnestly says that it was a prejudicial error and a grave one at that for the trial court to strike the testimony of his witness, Hagerman (R 23), and it was a further grave error to reject the offer of proof submitted on behalf of this witness (R 26). It was error to prevent petitioner from testifying in rebuttal of the allegations of the Department of Justice recommendation (Exhibit B-16, SR 50) and it was a further error to reject his offer of proof which unambiguously and head-on challenged the statement of the Department of Justice (R 40). That it was prejudicially erroneous on the trial court's part to prevent petitioner from presenting such testimony is clearly shown by the fact that the Court of Appeals was misled because of the absence of such testimony and accepted "non-facts" and "facts", as in George Orwell's "1984", "newspeak" permits peace to be equated with war, honor with dishonor, etc. Petitioner submits that the Court of Appeals erred when it held (R 63) that unsubstantiated evidence presented by the government *ex parte* in the form of the recommendation of the Department of Justice (B-16, SR 50) did overcome and rebut his prima facie showing. However, the petitioner calls this Court's attention to that sentence in the Court of Appeals opinion where it is said that "this fact would suffice to rebut Parker's prima facie showing." This sentence clearly indicates, whether by inadvertence or otherwise, that the Court of Appeals admitted that petitioner made a "prima facie showing" as to his claim to full exemption from military service (1-O) and therefore, he does not feel it necessary to belabor the point of his *prima facie* case. He will not belabor the absence of basis in fact because he believes that he has shown that no basis in fact exists which would justify the denial

of his *prima facie* established claim to 1-O classification and he submits therefore that the judgment of the Court of Appeals for the Seventh Circuit upholding the judgment of trial court ought to be reversed.

V.

THE SENDING OF THE SELECTIVE SERVICE FILE TO THE JURYROOM WAS AN ERROR PARTICULARLY BECAUSE THE TRIAL COURT PREVENTED PETITIONER FROM EXPLAINING THE CONTENT THEREOF.

Petitioner complained before the Court of Appeals for the Seventh Circuit that he was prejudiced by the trial court's ruling pursuant to which he was prevented from testifying about certain documents in his Selective Service file while the trial court permitted the jury to have the file before it.

In reviewing this matter the Court of Appeals said that the trial court

> "... erred in permitting the S.S.S. file to go to the jury, for, as the court in *Cox* said, '* * * nothing in the file is pertinent to any issue proper for jury consideration.' But we see no prejudice from this fact since the jury had already heard oral testimony of the substance of its contents." (R 65)

Petitioner submits that the logic or illogic of the above holding is not the law, particularly not because it was the prosecution which introduced on oral testimony the contents of the Selective Service file and to boot, over the strenuous objection of petitioner (R 5 to 8). Petitioner believes and so submits that the trial court erred when thereafter, because the objection of the government prevented his witness, Hagerman (R 20) and prevented him

to testify about the selfsame documents which were so introduced by the government (R 27 to 33). Certainly, petitioner should have been given the opportunity to explain what was within the file after the court, in front of the jury, informed him that the whole of the file will go before the jury (R 22). It seems that the Court of Appeals believes that the ADMITTED ERROR of sending the file to the jury was remedied because the jury was permitted to learn about the file by oral testimony too. Petitioner believes that this compounds the error because if the jury had no business to peruse the Selective Service file it had no business to hear oral testimony concerning it.

The Court of Appeals sees no prejudice resulting from the jury seeing the file. The sight of the Court of Appeals does not reach far enough because it is impossible to fathom how much the jury's mind was influenced by the voluminous Selective Service file before it. Petitioner believes that the jury had to be influenced against him when the file was sent out for its inspection and particularly after it heard the court's ruling that petitioner may not testify about the file nor was he permitted to explain the contradictory documents in it. Such a ruling did undoubtedly convince the jury that the weighty documents are sacrosanct, and pursuant thereof, the petitioner perforce had to be found guilty.

Petitioner argued before the Court of Appeals and argues now that the sending of the files to the jury gravely prejudiced him. The prejudice resulted from a pyramiding of the trial court's erroneous ruling. Firstly, the jury heard oral testimony about the Department of Justice recommendation to the Appeal Board (B-16, SR 50 to 53) however, he was not permitted to present testimony that such exhibit contained many misstatements, falsehoods,

particularly with reference to what petitioner allegedly said to the Hearing Officer of the Department of Justice and what such Hearing Officer said to him (R 32). Secondly, the jury was permitted to hear testimony and was given the opportunity to see Government's Exhibit B9 (SR 45) however, petitioner was not permitted to give testimony what, in his remembrance, the actual conversation was between him and the draft board (R 31). When petitioner testified that he wrote Exhibit B-12 (SR 47) "a day after my appearance before the draft board" the government objected to the testimony and moved that the same be stricken. The motion was granted by the trial court and the jury told to disregard it (R 31). Petitioner submits that such and other similar rulings of the trial court pertaining to the Selective Service file could not but prejudice the jury against him and the Court of Appeals is in error when it was unable to see such resulting prejudice.

Petitioner recognizes that the trial court attempted, by its instructions, to make it clear to the jury that the classification given to him is not before it, however, there was never any explanation given to the jury what it ought to do with the file. Was it to be expected that the jury is going to peruse the file but it will close its eyes when it came to the matter of classification. How can that be done by the jury or anyone else, since the whole of the file pertains to petitioner's classification and to nothing else. We believe that the jury did consider the classification and therefore, the file before it resulted in grave prejudice to him as it was said by this Court in *Cox* v. *United States*, 332 U.S. 442 (1947) 457, 68 S.Ct. 115. In that case this Court, in footnote No. 4 refers to *Smith* v. *United States*, (4th Cir.) 157 F.2d 176. In the *Smith* case

the Court of Appeals for the Fourth Circuit, according to the footnote

> "held that the submission of the issue of classification to the jury constituted reversible error."

Because this Court so quoted *Smith* v. *United States* with approval, petitioner submits that on the ground that the jury had the Selective Service before it, the judgment of the Court of Appeals for the Seventh Circuit ought to be reversed.

VI.

PETITIONER WAS PREJUDICED BY THE TRIAL COURT'S REFUSAL TO ORDER THE GOVERNMENT TO PRODUCE THE HEARING OFFICER'S REPORT WHEN SUCH REPORT WAS REFERRED TO IN A GOVERNMENT EXHIBIT IN EVIDENCE AND WHEN THE TRUTHFULNESS OF SUCH EXHIBIT WITH REFERENCE TO THE HEARING OFFICER'S REPORT WAS CHALLENGED BEFORE THE TRIAL COURT.

The government introduced into evidence Exhibit B-16 (SR 50), the letter sent by the Department of Justice to the Appeal Board which concludes that

> ". . . he recommended that registrant (meaning the petitioner) be granted a 1-A-O classification." (SR 52)

This exhibit begins with reference to Section 6 (j) of the Universal Military Training and Service Act pursuant to which

> ". . . an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant (i.e. petitioner) by Mr. F. M. Brittingham, a Hearing Officer for the Department of Justice." (SR 50).

The same exhibit then underlines that

> "The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Résumé of the Inquiry attached hereto and made a part hereof."

The Résumé referred to appears as SR 54-55 and makes no mention whatsoever what the Hearing Officer reported to the Department of Justice. In the body of Exhibit B-16 (SR 51 to 52) reference is made to the alleged statements made by petitioner before the Hearing Officer and to the alleged statements of the Hearing Officer to petitioner.

In Government's Exhibit 17 (SR 56 to 58) petitioner contradicts many of the alleged statements which were imputed to him in Government Exhibit B-16 and those contradictions fully justified his motion for an order upon the government to produce the Hearing Officer's report. The trial court was however, to the contrary opinion and defendant's counsel was not permitted to cross-examine the draft board clerk who testified for the government (when introducing the Selective Service file), and he was not permitted to ask this witness whether the Brittingham report referred to in Government Exhibit B-16 is in the Selective Service file (R 9). Petitioner moved that the government be ordered to produce the Brittingham report but the trial court refused to hear the motion to produce (R 9). When petitioner renewed his motion to produce on the ground that B-16 (SR 50) is not a fair résumé of the Hearing Officer's report and when he again moved for production for the purpose of clarifying the contradictions existing between B-16 and B-17, (both introduced by the government), the motions were denied (R 9).

In the face of the above statement of the record, the holding of the Court of Appeals for the Seventh Circuit is *non sequitur* when it says

> "There was no error in the District Court's ruling which precluded production of the Department of Justice hearing officer's report and no error in denying the motion for acquittal on this ground. Neither the Act nor the regulation, since 1952, requires the report placed in the file. *Gonzales* v. *United States*, 364 U.S. 59 (1960).

This holding is *non sequitur* because petitioner did not claim that the Hearing Officer's report is to be made part of his Selective Service file irrespective of whether that file was made up before or after 1952. However, he maintains that this Court did not hold in *Gonzales* v. *United States*, 364 U.S. 59 as the Court of Appeals seems to read that opinion. To the contrary, in reading the *Gonzales* case of 1960, and applying it to the record here, that case teaches that petitioner's motion to produce the Hearing Officer's report should have been granted. This Court held that:

> ". . . petitioner has failed to show any particular need for the report and notes. While there are now allegations of the withholding of 'favorable evidence developed at the hearing' and a denial of a 'full and fair hearing', no such claim was made by petitioner at any stage of the adminstrative process. Moreover, his testimony at trial never developed any such facts. *In the light of these circumstances,* as well as the fact that the issue at trial in this respect centered entirely on the Department's recommendation, which petitioner repudiated but which both the appeal board and the courts below found supported by the record, we find no relevancy in the hearing officer's report and notes." (page 1557) (emphasis added)

In the *Gonzales* case, petitioner presented no challenge "at any stage of the administrative process" while peti-

tioner did so point-blank when he put into his file Exhibit B-17 (SR 56 to 58).

In the *Gonzales* case the "testimony at trial never developed any facts which would have shown the withholding of "favorable evidence developed at the hearing." In the instant case, to the contrary, petitioner developed or attempted to develop testimony to show that "favorable evidence developed at the hearing" before the Hearing Officer was obscured and was denigrated by the Department of Justice report to the appeal board. (R 20, 23, 25, 29, 30, 31). Petitioner submits that in "*the light of these circumstances* as well as the" facts developed or which could have been developed but for the erroneous ruling by the trial court, the Hearing Officer's report should have been ordered to be brought into court.

During the trial when petitioner was not permitted to testify, he offered proof (R 35 to 41) which has shown without peradventure of doubt that Government's Exhibit B-16 (SR 50) with reference to the hearing before the Hearing Officer was false. The offer of proof denied that the Hearing Officer made the statements attributed to him in Government's Exhibit B-16 and denied the statements attributed to petitioner before the Hearing Officer in the selfsame exhibit.

Under the circumstances of this case, the Hearing Officer's report was the very basis for the Department of Justice recommendation (B-16, SR 50). The repudiation of the statements in that exhibit put the Hearing Officer's report clearly in issue and in consequence the relevance and materiality thereof was plainly established. Due process and the requirement of fair hearing made it mandatory for the trial court to order the production of the Hearing Officer's report. Its failure to do so was prejudicial error.

Selective Service regulation 1626.25 (procedure followed by the appeal board) makes it clear that that board should make its determination on the COMPLETE PRESENTATION OF THE FILES. There was no such presentation because while the file contained the Department of Justice recommendation (B-16, SR 50), it contained neither a fair résumé nor the original report of the Hearing Officer. The challenge by petitioner to Exhibit B-16 undoubtedly put him in a prejudicial position before the Appeal Board because there was nothing before that board to prove whether the challenge was justified or not. Because of the hiatus in the record, the Appeal Board was compelled to make a choice and it did make the choice in disfavor of petitioner. The choice was whether to assume that the Department of Justice recommendation (B-16, SR 50) was a factual and truthful one notwithstanding petitioner's challenge, or whether petitioner was sincere and honest in his challenge notwithstanding the statement contained in Government's Exhibit B-16 which pertained to the Hearing Officer's report. Petitioner says that he was prejudiced and the prejudice can be seen from the fact that the Appeal Board ruled against his claim for full exemption from military service and it undoubtedly did so by concluding that his challenge directed towards Exhibit B-16 was not an honest one and therefore, that board must have further concluded that his sincerity as a whole must be found wanting. The prejudice so created by the trial court's refusal to order production of the Hearing Officer's report was great and irremediable. The prejudice was created by the trial court's refusal to order production of the report and therefore, it must be held that the Court of Appeals for the Seventh Circuit erred when it found "no error in the District Court's ruling which precluded production of the Department of Justice Hearing Officer's report." The judgment of the Court of Appeals ought to be reversed.

CONCLUSION.

In *Franks* v. *United States*, 216 F.2d 266, Judge Pope speaking for the unanimous United States Court of Appeals for the Ninth Circuit, involving an alleged Selective Service law violation, stated a truism that

> "In a criminal prosecution of this kind, the burden is upon the Government to establish the validity of the induction order, and if the matter which we here mention has a bearing upon that validity, (which we will discuss hereafter), then we must view the record in the light most favorable to the appellant as we proceed to construe its meaning."

In the case of *Manke* v. *United States*, 259 F.2d 518, the conviction of Manke, charged with violating the Selective Service Act, was reversed because the court thought

> ". . . that in view of the entire history of this case as shown by the record, and in view of the fact that the Appeal Board had no new evidence before it adverse to appellant's claim of conscientious objection, it would be unrealistic not to conclude that the Appeal Board, in classifying appellant as 1-A was influenced largely if not wholly by the recommendation of the Department of Justice. *Goetz* v. *United States*, 9 Cir., 216 F.2d 270. Since the recommendation, being made a part of the résumé, was founded on a mistaken assumption of fact we hold that its consideration by the Appeal Board amounted to a denial of procedural due process, and therefore appellant was entitled to a judgment of acquittal."

In the case of *Kretchet* v. *United States*, 284 F.2d 561 (1960), the United States Court of Appeals for Ninth Circuit considered the matter "in the light of the teachings

in *Sicurella* v. *United States*, 348 U.S. 385, 75 S.Ct. 403," and quoted therefrom to the effect that

> "The test is not whether the registrant is opposed to all war, but whether he is opposed, on religious grounds, to *participation* in war."

That test clearly applies to petitioner.

Petitioner submits that the holding of the *Kretchet* case clearly applies to him when in that case the United States Court of Appeals for the Ninth Circuit said:

> "We are unable to determine from the record whether the board, in refusing to sustain appellant's claim for exemption, did so because of appellant's lack of sincerity, or because it believed that appellant's conscientious objections were not based upon religious training and belief, or because appellant was not opposed to war in any form, or whether such action was based upon all three grounds, or on two of them. The advice given by the Department of Justice to the appeal board that it could refuse to sustain appellant's claim for exemption on the ground that he was not opposed to war in any form, in our view, was clearly erroneous and fatally infected the adverse recommendation of the Department of Justice."

This Court speaking of the requirements of due process in *Palko* v. *State of Conn.*, 302 U.S. 319, 58 S.Ct. 149, held that:

> "Fundamental too, in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after a fair trial. The hearing, moreover, must be a real one, not a sham or pretense."

Petitioner submits that in line with the holding of the various Courts of Appeals hereinbefore referred to (except the holding of the Court of Appeals for the Seventh

Circuit but including the holding of that court in the *Wilson* case), the judgment of the Court of Appeals for the Seventh Circuit must be reversed because his trial was not in accordance with the concept of due process and because his trial was not fair but simply a sham and pretense of a trial.

> ". . . A long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. . . Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice." *Rex* v. *Sussex Justices*, 1 K.B.D. (1924) at 259.

Petitioner submits that in his case justice was not done and it is manifest and on the record undoubted that such is the case. For that reason alone, though there are a great many others heretofore argued, the judgment of the Court of Appeals for the Seventh Circuit ought to be reversed.

Respectfully submitted,

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February 13, 1963

APPENDIX.

50 U.S.C. 462; 62 Stat. 622—OFFENSES AND PENALTIES.

(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title (sections 451-454 and 455-471 of this Appendix), or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title (said sections), rules, regulations, or directions who shall knowingly make, or be a party to the making of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title (said sections), or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title (said sections), or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title (said sections), or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title (said sections), or rules, regulations, or directions made pursuant to this title (said sections), or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this (said sections) or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such of-

fenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000.00, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title (said sections) unless such person has been actually inducted for the training and service prescribed under this title (said sections) or unless he is subject to trial by court martial under laws in force prior to the enactment of this title (June 24, 1948). Precedence shall be given by courts to the trial of cases arising under this title, and such cases shall, upon request of the Attorney General, be advanced on the docket for immediate hearing. . . * * * June 24, 1948, c. 625, Title 1, p. 12, 62 Stat. 622.

PART 1622—CLASSIFICATION RULES AND PRINCIPLES

General Principles

1622.1 *General Principles of Classification.*—(a) The Universal Military Training and Service Act, as amended, provides that every male citizen of the United States, every male alien admitted to the United States for permanent residence, and every male alien who has remained in the United States in a status other than that of permanent resident for a period exceeding one year, who is between the ages of 18 years and 6 months and 26 years, shall be liable for training and service in the Armed Forces of the United States, and that persons who on June 19, 1951, were or thereafter are, deferred under the provisions of clause (A) or clause (C) of section 6(c)(2) of such Act shall remain liable for training and service until they attain the age of 28, and that persons who on June 19, 1951, were, or thereafter are, deferred under any other provision of section 6 of such Act shall remain liable for training and service until they

attain the age of 35. Certain exemptions and deferments are specifically provided; others are authorized to be provided by regulations promulgated by the President.

(b) Classification is the key to selection and it must be accomplished in the spirit of the Universal Military Training and Service Act, as amended, in which the Congress has declared "that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

(c) It is the local board's responsibility to decide, subject to appeal, the class in which each registrant shall be placed. Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. The local board will receive and consider all information, pertinent to the classification of a registrant, presented to it. The mailing by the local board of a Classification Questionnaire (SSS Form No. 100) to the latest address furnished by a registrant shall be notice to the registrant that unless information is presented to the local board, within the time specified for the return of the questionnaire, which will justify his deferment or exemption from military service the registrant will be classified in Class I-A.

(d) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious or other organization. Each such registrant shall receive equal justice.

1622.2 *Classes.*—Each registrant shall be classified in one of the following classes:

CLASS I

Class I-A: Available for military service.

Class I-A-O: Conscientious objector available for noncombatant military service only.

Class I-C: Member of the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service.

Class I-D: Member of reserve component or student taking military training.

Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.

1622.11 *Class I-A-O: Conscientious Objector Available for Noncombatant Military Service Only.*—(a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces.

(b) Section 6(j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

1622.14 *Class I-O: Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any

form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces.

(b) Section 6(j) of title I of the Universal Military Training and Service Act, as amended, provides in part as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

1622.16 *Class I-W: Conscientious Objector Performing Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest.*—(a) In Class I-W shall be placed any registrant who has entered upon and is performing civilian work contributing to the maintenance of the national health, safety, or interest, in accordance with order of the local board.

(b) In Class I-W shall be placed any registrant who subsequent to being ordered by the local board to perform civilian work contributing to the maintenance of the national health, safety, or interest has been released from such work by the local board after satisfactorily performing the work for a period of twenty-four consecutive months or has been sooner released from such work by the Director of Selective Service under the provisions of section 1660.21 of this chapter. Each such registrant shall be identified on all records by following his classification with the abbreviation "Rel." and, upon attaining an age beyond the maximum age of liability for military service under the provisions of the selective service law, all such registrants shall be reclassified in Class V-A.

PROCEDURE FOLLOWED BY APPEAL BOARD

1626.26 *Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall tentatively determine whether or not the registrant is eligible for classification in a class lower than Class I-O or in Class I-O. If the appeal board finds that the registrant is eligible for classification in Class I-O or in a lower class, it shall place him in the appropriate class.

(b) If the appeal board tentatively determines that the registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(c) No registrant's file shall be forwarded to the United States Attorney by any appeal board unless the record on the Classification Questionnaire (SSS Form No. 100) shows and the letter of transmittal states that the appeal board reviewed the file and tentatively determined that the registrant should not be classified in Class I-O or in a lower class. Any file forwarded to the United States Attorney without the information required by this paragraph shall be returned to the appeal board.

(d) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraphs (b) and (c) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall

be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

(e) Upon receipt of the recommendation of the Department of Justice, the appeal board shall mail a copy thereof to the registrant together with a letter advising the registrant that, within thirty days after the date of such mailing, he may file with the appeal board a written reply concerning the recommendation of the Department of Justice. Upon receipt of the reply of the registrant or the expiration of the period afforded him to make such reply, whichever occurs first, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice. The appeal board also shall give consideration to any reply to such recommendation received from the registrant. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the recommendation of the Department of Justice, a copy of its letter transmitting a copy of such recommendation to the registrant, and any reply to such recommendation received from the registrant.

SECTION 6 (j) OF THE UNIVERSAL MILITARY TRAINING AND SERVICE ACT, 50 U.S.C.A. APPENDIX § 456 (j):

"Nothing contained in this Title (Sections 451-454 and 455-477 of this Appendix) shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, that does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *"